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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM A. KENT (formerly GOICHMAN), Plaintiff, v. W.C.KELLY, THOMAS FRAZIER, DAVID MARSHALL and HARRY GIEM SERVICE STATION, Defendants.	Civil No. 74-1229 SW ORDER DENYING KENT'S MOTION FOR AN ORDER TO SHOW CAUSE

Plaintiff William Kent brought this suit against Defendants W.C. Kelly, Thomas Frazier, David Marshall and the Harry Giem Service Station, alleging claims for deprivation of his constitutional rights, assault and false imprisonment arising out of the towing of his car in Carmel, California during 1974. After lengthy proceedings in district court and one appeal to the Ninth Circuit, Kent was successful in challenging the constitutionality of Defendants' action as being in violation of procedural due process. On May 14, this Court issued a final judgment enjoining Defendants from continuing to employ their towing policies and procedures.

Now, more than 17 years later, Kent brings a motion for an order to show cause why this City of Carmel and the

Carmel Police Department should not be held in contempt of court for failing to remedy the unconstitutionality of the city's towing procedures.Based on the following, Kent's motion is DENIED.

BACKGROUND

On April 13, 1974, Plaintiff William Kent parked his rented car on a city street in Carmel, California so that he could visit the beach. The car was parked half in front and half behind a "No Parking " sign.

While Kent was cavorting in the sand, a resident of Carmel called the police department to complain that Kent's car was obstructing an intersection. In response, officers William Kelly and Thomas Frazier went to the intersection where they confirmed that the car was a traffic hazard. The police department dispatcher then called the Harry Giem Mobil Service Station to send a truck to tow Kent's car.

When Kent returned form the beach, his car was gone. After an hour of searching, he located the car at Giem's Service Station. He immediately climbed into the driver's seat and

attempted to drive the car away. One of Giem's attendants saw Kent and tried to prevent him from removing the car without paying the $12.50 towing fee. When Kent objected vociferously, the station manager, David Marshall, came over to find out what was going on. Eventually, a police officer was called to the scene.

After a hearted discussion, Kent paid the $12.50 towing bill and drove away. Hr filed this suit several months later in June of 1974.

DISCUSSION

Defendants have opposed Kent's motion by filing a motion to quash based on the fact that neither the City of Carmel nor the Carmel Police Department are, or ever were, parties to this lawsuit.

After reviewing the case file, the Court agrees with Defendant Kent proceeded with this suit solely against the individual defendants. Neither the City of Carmel nor the Carmel Police Department are named in the complaint or ever made an appearance in this action. In fact, on May 2, 1979, this Court explicitly denied Kent's motion to add the City of Carmel as a

defendant. Furthermore, Kent's attempt to certify a defendants' class made up of all Carmel police officers who had enforced Carmel's towing ordinance was denied by this Court on several occasions and affirmed upon appeal by the Ninth Circuit.

It is true that the Final judgment entered on May 14, 1979, does make reference to the Carmel Police Department and the City of Carmel. However, these references resulted from mere oversight, and did not operate to add any defendants to this lawsuit

CONCLUSION

Based on the foregoing, Kent's motion for an order to show cause against the City of Carmel and the Carmel Police Department is DENIED.

IT IS SO ORDERED.

DATE: 22 Aug. '96

signed

SPENCER WILLIAMS
United States District Judge